IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 316 OF 2015

Commissioner of Income Tax 23 }
and }
Assistant Commissioner of Income }
Tax 23(1) } Petitioners
versus
Income Tax Appellate Tribunal } Respondent

Mr. Arvind Pinto for the Petitioners.

Mr. Nitesh Joshi with Mr. Atul K. Jasani for the Respondent.

CORAM :- S. C. DHARMADHIKARI &
A. K. MENON, JJ.

DATED :- MARCH 26, 2015

P.C. :-

We have heard Mr. Pinto appearing for the Petitioners. The Commissioner of Income Tax is aggrieved and dissatisfied by the fact that initial order dated 26th March, 2013 has been recalled and set aside by the Tribunal at the instance of the Assessee. Meaning thereby, an application made under section 254 of the Income Tax Act, 1961 purporting to correct the mistakes in the initial order of the Appellate Tribunal has been allowed.

2) It is fairly stated that after restoration of the Appeal by the impugned order dated 28th June, 2013, the Tribunal has finally decided it by its order dated 11th July, 2014 in Income Tax Appeal No.6188/M/2011. A copy of this order is taken on record and marked as 'X' for identification.

3) Mr. Pinto further states that the Revenue has challenged this order by filing an Appeal under section 260A of the Income Tax Act, 1961 in this Court.

4) In view thereof and facts peculiar to this case, we dispose of this Writ Petition by clarifying that it would be open for the Revenue to raise all contentions on the legality, validity and correctness of the findings of the Tribunal in the order dated 11th July, 2014 and which is stated to be adverse to the Revenue. Such contentions can be raised in the Revenue's substantive Appeal, which is filed in this Court. Keeping that course open and finding that no useful purpose will be served by entertaining this Writ Petition that we dispose it of. This order shall not be treated as precedent in another future cases. All contentions of both sides are kept open.

(A.K.MENON, J.) **(S.C.DHARMADHIKARI, J.)**